

EXHIBIT A

L A Y E R S



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August 17, 2007

Hand Delivered

Ian S. Birk
Keller Rohrbach L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101

Re: *Kelley v. Microsoft Corp.* – Western District No. C07-00475 MJP

Dear Ian:

Along with this letter, I am providing disks containing Microsoft's initial production of documents, bates numbered MS-KELL 0000001- 0000276 and MS-KELL 5000001-5000059. As you and I have discussed, many of these documents are marked "CONFIDENTIAL," and we expect them to be treated according to the terms of a Stipulated Protective Order, which we anticipate presenting to Judge Pechman in the near future.

In most circumstances, we would not agree to produce documents prior to entry of the Protective Order. Here, however, you have agreed that any documents marked "CONFIDENTIAL" (a) will not be disclosed to anyone other than counsel of record and paralegals who are actively working on this case and (b) will not be filed with the Court for any purpose until the Court has entered a Protective Order setting forth procedures for handling documents designated by a party as "CONFIDENTIAL." In reliance on those commitments, we are proceeding with production.

Please signify your acceptance of these terms by countersigning this letter in the space below. Thank you again for your courtesy and cooperation in working through these issues.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'Steve Rummage', written over the printed name.
Stephen M. Rummage

Accepted and agreed to:

KELLER ROHRBACK, L.L.P.

A handwritten signature in black ink, appearing to read 'Ian S. Birk', written over the printed name.
Ian S. Birk
Dated: August 17, 2007

EXHIBIT B

SEP-11-07 01:44PM FROM:Gordon Tilden Thomas & Cordell LLP

206-467-6282

T-488 P.002/002 F-882

GORDON TILDEN THOMAS & CORDELL LLP

ATTORNEYS AT LAW

1001 FOURTH AVENUE, SUITE 4000 · SEATTLE, WASHINGTON 98154-1007

TELEPHONE: (206) 467-6477 · FACSIMILE: (206) 467-6292

EMAIL: MWILNER@GORDONTILDEN.COM

September 11, 2007

Sent via Fax and U.S. Mail

Stephen M. Rummage
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

Re: Kelley, Hansen v. Microsoft

Dear Steve:

The parties had entered an interim agreement that permitted Microsoft to designate documents confidential to permit us to begin our initial review pending entry of a protective order by the Court. The concept was that documents would be produced and, if designated confidential, would be available only to attorneys and staff, and would not be filed with the Court. At the end of the 30(b)(6) depositions, Chuck Caspar stated on the record that Microsoft is designating all three 30(b)(6) transcripts as confidential. Pursuant to our interim confidentiality agreement, we therefore did not submit any portions of the 30(b)(6) testimony with our discovery motion. Microsoft, however, has submitted excerpts of the third 30(b)(6) deposition in support of its opposition.

Given this development, we only think it fair that we too be permitted to file excerpts of the 30(b)(6) depositions in support of our motion. Therefore, we are planning on doing so with our reply brief. Please let us know as soon as possible if you believe Microsoft has a basis to challenge this – i.e., whether you believe that Microsoft is permitted to use the depositions but we are not.

Cordially,



Mark A. Wilner

MAW:jl

cc: William C. Smart

EXHIBIT C

Rummage, Steve

From: Rummage, Steve
Sent: Thursday, September 13, 2007 6:07 PM
To: 'Mark Wilner'
Cc: Rummage, Steve; Kinkead, Cassandra; 'Casper, Chuck'
Subject: Sundlie

Attachments: Sundlie Des.pdf

Mark: As promised, here are the designations for the Sundlie deposition. Please let me know if you need this in hard copy. I will try to get you Croft tomorrow morning.

I have no idea why the Protective Order has not yet been entered. That would make things a lot simpler ...

Regards, Steve.

Steve Rummage | Davis Wright Tremaine LLP
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Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.



Sundlie Des.pdf (6
KB)

EXHIBIT D

Rummage, Steve

From: Mark Wilner [mwilner@gordontilden.com]
Sent: Friday, September 14, 2007 12:41 PM
To: Kinkead, Cassandra
Cc: Rummage, Steve; Chuck Casper (Montgomery McCracken Walker); Jeff Thomas; Jacqueline Lucien
Subject: RE: Kelley - Draft Motion for Entry of Revised Protective Order
Attachments: Tindall.pdf; Mcsft OS Lic..pdf; Gui Kahl ltr..pdf; Marketing Agr..pdf; OEM Bull..pdf; Sundlie.pdf

Steve, Cassi, and Chuck:

In furtherance of my September 11, 2007 letter, we had a number of telephone calls wherein we discussed possible procedures for how plaintiffs may go about submitting materials to the Court on our reply that Microsoft has marked confidential—given that Microsoft submitted such materials in its opposition, contrary to the terms of the parties' confidentiality agreement pending the Court's decision on Microsoft's proposed protective order. As you know, the Court now has rejected the proposed protective order. At this point, we see no legal authority that requires us to file under seal any materials that Microsoft has decided to designate as confidential. That said, we remain willing and able to work with you on this issue on today's filing (within reason of course and especially given the very tight time constraints we now are up against).

It is our understanding of CR 5(g), and how filing under seal works on the ECF website as a practical matter, that – even if we wanted to – we would be prohibited from filing any document under seal without a prior order or a pending motion or stipulation to seal to which the filing may refer. Thus, the only option that remains practical to us is the one similar to what we have been proposing this week; namely, that we would submit our exhibits to you as far in advance of filing as possible so that you and Microsoft could assess whether there are any confidentially marked materials for which it really needs protection and, if so, could file a motion to seal. If not, we would not file anything under seal.

Attached are copies of each exhibit we are going to file today. We will hold off on filing our papers with the court until 5:00 p.m. That gives you over 4 hours to determine whether any of these documents are truly sensitive and, if so, time to prepare the motion. As discussed this morning, we are in no position to be the moving party in this circumstance. Not only do we believe that none of the materials we're submitting are truly confidential, they are not our documents and we certainly have no basis (consistent with Rule 11) to provide the "clear statement of the facts justifying a seal and overcoming the strong presumption in favor of public access" that CR 5(g) requires of such a motion.

Finally, as we agreed this morning, the procedures that we use today are not to be used as precedent for future procedures and filings, but, instead, are based on the circumstances in which the parties currently find themselves. In this regard, we have received your proposed blanket stipulated protective order. We are not willing to sign that stipulation or the corresponding motion that you drafted. (Among other things, the proposed procedures looks to us almost same as what the judge counseled against – but stated in different words.) For purposes of getting past today, however, the motion you've already prepared could easily be turned into a motion to seal in the event you view any of our exhibits truly sensitive.

Mark

9/14/2007

GORDON TILDEN THOMAS & CORDELL LLP

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From: Kinhead, Cassandra [mailto:cassikinhead@DWT.com]

Sent: Friday, September 14, 2007 12:04 PM

To: Mark Wilner

Cc: Kinhead, Cassandra; Rummage, Steve; Chuck Casper (Montgomery McCracken Walker)

Subject: Kelley - Draft Motion for Entry of Revised Protective Order

Mark,

Our draft motion for entry of the protective order is attached for your review. Again, pls let us know if this is acceptable and if we can sign on your behalf.

Thank you,
Cassi

<<2082843_1.DOC>>

9/14/2007